

67. (Amended) The display apparatus Claim 56,
wherein the signal applier applies the scan signal to the row
wires row by row.

REMARKS

Claims 1-43 and 56-67 are now pending in this application. Claims 34-55 and 68 have been canceled without prejudice and without disclaimer of subject matter. Claims 56, 57, 65 and 67 have been amended.¹ Support for the amendment to Claim 56 is found in the specification and drawings as originally filed, at least in Fig 12.

Applicants note with appreciation the allowance of Claims 1-42 indicated in the Office Action.

Claims 43-50 were rejected under 35 U.S.C. § 251 as allegedly being an improper recapture of deliberately canceled subject matter (namely, the subject matter of Claims 67-95 from Application No. 08/191,065, the continuation of which matured into U.S. Patent 5,661,362, upon which the present reissue application is based) (see section 8 of the

^{1/} Claims 65 and 67 have been amended so as to depend from Claims 56, and a comma has been inserted in Claim 57 (at least that amendment has not been made for purposes related to patentability).

Office Action), and also were rejected for being based on an allegedly defective reissue declaration under 35 U.S.C. § 251. Also, section 6 of the Office Action states that the reissue declaration is defective.

Initially, without conceding the propriety of any of those allegations, Claims 43-55 and 68 have been canceled, thereby rendering all issues relating to those claims moot.

Although the Office Action does not explicitly state that Claims 56-67 were rejected under 35 U.S.C. § 251 as being an improper recapture of the subject matter from canceled Claims 67-95 of Application No. 08/191,065, the remarks supporting the rejection of Claims 43-50 under 35 U.S.C. § 251 discusses Claims 56-67. Applicants have carefully considered those remarks, but respectfully submit that Claims 56-67 do not improperly recapture surrendered subject matter of those Claims 67-95, for the following reasons.

7 MPEP § 1412.02 explicitly states that the recapture
2^d doctrine does not apply when a reissue claim varies materially from a surrendered claim. Applicants respectfully submit that independent Claim 56 of the present reissue

application varies materially from canceled Claims 67-94 of Application No. 08/191,065, because Claim 56 recites an electron-emission layer extending *from a first electrode to a second electrode*, whereas canceled Claims 67-94 each recited an electron-emitting region *spaced apart from electrodes*.

Applicants also respectfully submit that independent Claim 56 varies materially from canceled Claims 67-95 of Application No. 08/191,065, because Claim 56 recites that the electron-emission layer has an electron emission region containing an electrical discontinuity, whereas canceled Claims 67-95 did not recite any such feature. Moreover, independent Claim 56 varies materially from canceled Claims 67-95 of Application No. 08/191,065, because, unlike Claim 56, none of those canceled Claims 67-95 recited a matrix wire configuration and a signal applier for applying signals to row and column wires of that configuration.

For these reasons, Applicants respectfully submit that Claims 56-67 do not improperly recapture the subject matter of Claims 67-95 canceled from Application No. 08/191,065.

In the remarks in section 6 of the Office Action, relating to the reissue declaration, reference is made to Claims 56-63. In particular, the Office Action alleges that the declaration is defective because the statement that "the invention as defined in . . . claims [43-63] could and should have been claimed by the inventors" is somehow inconsistent with the Examiner's position that "reissue claims must be for the same general invention", since Claims 1, 15, and 27 of U.S. Patent 5,661,362 are directed to a device "wherein the electron-emitting device has no overlapping structure", whereas "new claims 43-63 are directed to electron-emitting devices having overlapping structure".²

Applicants respectfully traverse the Examiner's reasoning, for the following reasons. MPEP § 1412.01 specifically states that the requirement under 35 U.S.C. § 251 that reissue claims be for the same invention as that disclosed in the original patent, does not mean that the invention being claimed in the reissue application must have been claimed in the original patent. According to MPEP § 1412.01, claims presented in a reissue application are

^{2/} As noted above, Claims 43-55 and 68 have been canceled without prejudice and disclaimer of subject matter.

considered to satisfy the requirement of 35 U.S.C. § 251 that the claims be "for the invention disclosed in the original patent" where:

(A) the claims presented in the reissue application are described and enabled by the original patent specification such that 35 U.S.C. § 112, first paragraph, is satisfied; and

(B) nothing in the original patent specification indicates an intent not to claim the subject matter of the claims presented in the reissue application.

Applicants respectfully submit that (A) and (B) are satisfied in the present case, since Claims 56-63 are fully supported in the originally patent specification, at least in, for example, Figs. 12 and the accompanying description in the specification, and because nothing in the original patent specification indicates an intent by Applications to not claim the subject matter of those claims.³

Accordingly, it is believed that the reissue declaration complies fully with 35 U.S.C. § 251, with respect

^{3/} Applicants intend to file a supplemental reissue declaration referring to Claims 64-67 in this application shortly.

to Claims 56-67. If the Examiner disagrees, he is respectfully requested to point out which particular portion of the specification he believes indicates an intent to not claim the subject matter of Claims 56-67.

Claims 68 was objected to for allegedly being in improper dependent form, and Claims 56-68 were rejected under the judicially-created doctrine of obviousness-type double patenting as being unpatentable over Claims 1, 3, and 4 of commonly-assigned U.S. Patent 5,066,883 (Yoshioka et al.) in view of U.S. Patent 3,735,186 (Klopfer et al.) and U.S. Patent 4,575,765 (Hirt).

Initially, without conceding the propriety of either the objection to Claim 68 or those claim rejections, Claims 43-55 and 68 have been canceled, thereby rendering the objection to claim 68 and the rejection of Claims 43-55 moot.

Independent Claim 56 recites that the electron-emission layer recited therein extends *from the first electrode to the second electrode* of the electron source plate. For example, as amended, Claim 56 recites, in part:

"a first electrode disposed on said substrate,
a second electrode disposed on said substrate,
and

claim 1, 3, 4
an electron-emission layer having an electron emission region which contains an electrical discontinuity, at least a portion of said electron-emission layer extending from a surface of the first electrode to a surface of the second electrode, for emitting an electron from the electron emission region upon an application of a low voltage across said first and second electrodes"

In contrast to the above-quoted features of Claim 56, Claims 1, 3, and 4 of U.S. Patent 5,066,883 each explicitly recite "said insulating layer having an electron-emitting region spaced apart from said electrodes"

None of the claims of Yoshioka et al. recites an electron-emission layer, at least a portion of which extends from a surface of a first electrode to a surface of a second electrode of an electron source plate, as set forth in Claim 56 of the present application.

Klopper et al. apparently is cited in the Office Action as evidence that it is well known to include an electron source in a display device. However, Applicants submit that even if Klopper et al. be deemed to teach all that it is cited for in the Office Action, and even if the electron-emitting device defined in Claims 1, 3, and 4 of Yoshioka et al. were to be included in a display device of Klopper et al., as proposed by the Examiner, the resulting

combination still would not include the above-highlighted features of Claim 56.

Hirt apparently is cited in the Office Action as evidence that it is well known to provide matrix addressing of electron emitters. However, even if Hirt be deemed to teach such feature, and even assuming Hirt were to be combined with the electron-emitting device defined in Claims 1, 3, and 4 of Yoshioka et al. and the display device of Klopper et al. as proposed by the Examiner, the resulting combination still would not teach or suggest the above-highlighted features of Claim 56.

Moreover, Applicants submit that there would have been no motivation to replace the electron source of Klopper et al. with the electron-emitting device defined in Claims 1, 3, and 4 of Yoshioka et al., since Klopper et al. requires the use of cavities that include an electron emissive layer 7 disposed on an electrode 2, to provide high electrical resistance between the electrodes, whereas Claims 1, 3, and 4 of Yoshioka et al. recite that an electron-emitting region is spaced apart from electrodes of the device defined in those claims.

For all of the foregoing reasons, Claim 56 is deemed to be clearly patentable over the prior art relied on by the Examiner.

A review of the other art of record has failed to reveal anything which, in Applicants' opinion, would remedy the deficiencies of the art discussed above, as references against independent Claim 56 herein. That claim is therefore believed patentable over the art of record.

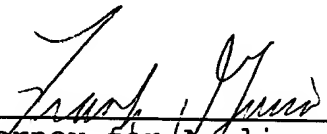
Claims 57-67 are each dependent from independent Claim 56 discussed above and are therefore believed patentable for the same reasons. Since each dependent claim is also deemed to define an additional aspect of the invention, however, the individual reconsideration of the patentability of each on its own merits is respectfully requested.

In view of the foregoing amendments and remarks, Applicants respectfully request favorable reconsideration and early passage to issue of the present application.

Applicants' undersigned attorney may be reached in our New York office by telephone at (212) 218-2100. All

correspondence should continue to be directed to our address
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Respectfully submitted,



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